

REMARKS

I. Introduction

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1-26, 27-43, 46-47, and 58-62 have been canceled. The cancellation of claims does not constitute acquiescence in the propriety of any rejection set forth by the Examiner. Applicants reserve the right to pursue the subject matter of the canceled claims in subsequent divisional applications.

Claim 56 is currently amended.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

Upon entry of this Amendment, claims 44, 45, 48-57 and 63-68 will remain pending in the application.

Because the foregoing amendments do not introduce new matter, entry thereof by the Examiner is respectfully requested.

II. Response to Issues Raised by Examiner in Outstanding Office Action

a. Claim Rejections - 35 U.S.C. § 112, Second Paragraph

Claims 56 and 57 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office asserts that it is unclear how the DNA encodes for the entire *M. tuberculosis*. Office Action, p. 2. Applicants have amended claim 56 to recite the detection of polynucleotides encoding said *M. tuberculosis* "proteins" and request reconsideration of this rejection.

Claims 44, 45, 48-57 and 63-68 are rejected under 35 U.S.C. § 112, second paragraph, because the nomenclature describing the proteins is arbitrary and does not provide physical characteristics or sequence information. Office Action, p. 3.

The "Rv"-number provides the person skilled in the art with clear and unambiguous support for what protein of *Mycobacterium* is described and which gene encodes the corresponding mycobacterial protein. On page 9 of the specification, Cole, et al., Nature, 393, 537-544 (1998) is disclosed. See response from 11/19/2004 submitting Cole. Cole describes the complete sequence of the *M. tuberculosis* H37Rv genome and identifies a total of 3924 individual genes. Table 1 of this publication provides a list of the "Rv"-classification. Furthermore, on page 543 of the Cole reference, a link to a currently active web page is given where the complete sequence of *M. tuberculosis* H37Rv could be found before the priority date of the present invention. In addition, the specification also provides a reference to web sites with the genome sequence (See page 9, second to last line, or page 16, first paragraph, lines 7-9). A person of skill in the art could have used these references to easily identify and isolate the amino acid or nucleic acid sequence from the claimed proteins.

For example, if one views the following site, <http://genolist.pasteur.fr/TubercuList/>, one can enter the Rv0068 or Rv3407 into the "Gene name" search field and find the corresponding nucleotide and protein sequences for both of the identified *M. tuberculosis* genes.

Therefore, Applicant requests withdrawal of this rejection.

CONCLUSION

The present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date 2/27/07

FOLEY & LARDNER LLP
Customer Number:
22428

PATENT TRADEMARK OFFICE

Telephone: (202) 672-5483
Facsimile: (202) 672-5399

By *Richard C. Peet* ^{Reg. H} 59,349

for Richard C. Peet
Attorney for Applicant
Registration No.: 35,792